

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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IN THE MATTER OF:

Bountiful/Woods Cross/
5th South PCE Plume NPL Site
Bountiful, West Bountiful, and
Woods Cross, Davis County, Utah

W.S. Hatch Company and
Jack B. Kelley, Inc.
SETTLING PARTIES

U.S. EPA Region 8

EPA Docket No. CERCLA-08-2006-0003

PROCEEDING UNDER SECTION
122(h)(1) OF CERCLA
42 U.S.C. § 9622(h)(1)

FILED
EPA REGION VIII
HEARING CLERK

ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT

I. JURISDICTION

1. This Administrative Settlement Agreement ("Agreement") is entered into pursuant to the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9622(h)(1), which authority has been delegated to the Regional Administrators of the EPA by EPA Delegation No. 14-14-D and further delegated, through a series of intermediate delegations, to the undersigned representatives of EPA. This Agreement is also entered into pursuant to the authority of the Attorney General of the United States to compromise and settle claims of the United States, which authority, in the circumstances of this settlement, has been delegated to the Chief and Deputy Chiefs of the Environmental Enforcement Section of the U.S. Department of Justice.

2. This Agreement is made and entered into by EPA and W.S. Hatch Company and Jack B. Kelley, Inc. ("Settling Parties"). The Settling Parties consent to and will not contest the authority of the United States to enter into this Agreement or to implement or enforce its terms.

II. BACKGROUND

3. This Agreement concerns the Bountiful/Woods Cross/5th South PCE Plume NPL Site ("Site") located in Bountiful, West Bountiful, and Woods Cross, Davis County, Utah. EPA alleges that the Site is a facility as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

4. In response to the release or threatened release of hazardous substances at or from the Site, EPA undertook response actions at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and will undertake additional response actions in the future.

5. In performing response actions at the Site, EPA has incurred response costs and will incur additional response costs in the future.

6. EPA alleges that Settling Parties are responsible parties pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and are jointly and severally liable for response costs incurred and to be incurred at the Site.

7. EPA has reviewed the Financial Information submitted by the W.S. Hatch Company to determine whether W.S. Hatch Company is financially able to pay response costs incurred and to be incurred at the Site. Based upon this Financial Information, EPA has determined that W.S. Hatch Company has limited financial ability to pay for response costs incurred and to be incurred at the Site.

8. EPA and Settling Parties recognize that this Agreement has been negotiated in good faith and that this Agreement is entered into without the admission or adjudication of any

issue of fact or law. The actions undertaken by Settling Parties in accordance with this Agreement do not constitute an admission of any liability. Settling Parties do not admit, and retain the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Agreement, the validity of the facts or allegations contained in this Section.

III. PARTIES BOUND

9. This Agreement shall be binding upon and inure to the benefit of EPA and Settling Parties and their respective successors and assigns. Any change in ownership or corporate or other legal status of Settling Parties, including but not limited to any transfer of assets or real or personal property, shall in no way alter Settling Parties' responsibilities under this Agreement. Each signatory to this Agreement certifies that he or she is authorized to enter into the terms and conditions of this Agreement and to bind legally the party represented by him or her.

IV. STATEMENT OF PURPOSE

10. By entering into this Agreement, the mutual objective of the Parties is to avoid difficult and prolonged litigation by allowing Settling Parties to make cash payments to address their alleged civil liability for the Site as provided in the Covenant Not to Sue by EPA in Section VIII, subject to the Reservations of Rights by EPA in Section IX.

V. DEFINITIONS

11. Unless otherwise expressly provided herein, terms used in this Agreement which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Agreement, the following definitions shall apply:

- A. "Agreement" shall mean this Administrative Settlement Agreement.
- B. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*
- C. "Day" shall mean a calendar day. In computing any period of time under this Agreement, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.
- D. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies, or instrumentalities of the United States.
- E. "Financial Information" shall mean those financial documents submitted to EPA by W.S. Hatch Company on March 19, 2001 and September 15, 2003, in response to requests for information by EPA under Section 104(e) of CERCLA.
- F. "Interest" shall mean interest at the rate specified for interest on investments of the Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.
- G. "Net Sales Proceeds" shall mean the total value of all consideration received by W.S. Hatch Company for the Transfer of the Property less i) the balance of W.S. Hatch Company's mortgage on the Property, if any; ii) closing costs limited to those reasonably incurred and actually paid by W.S. Hatch Company associated with the Transfer of the Property; and iii) federal and state taxes owed on the proceeds. W.S. Hatch Company shall provide EPA with documentation sufficient to show the total value of all consideration received by W.S. Hatch

Company for each Transfer (or if the consideration cannot be determined, the Fair Market Value of the Property) at the time of each Transfer, the amount of the proceeds of the Transfer, and the amounts corresponding to items i) through iii) above. This documentation may include, but not be limited to, the report of an appraisal paid for by W.S. Hatch Company, performed by an appraiser satisfactory to the Parties, upon appraisal assumptions satisfactory to the Parties. The documentation may also include, either as part of the report or separately, 1) a tax statement showing the assessed valuation of the Property for each of the three years immediately preceding the Transfer, and 2) a schedule showing all outstanding indebtedness on the Property.

H. "Notice of Federal Lien" means the Notice of Federal Lien recorded on the real property records at the Davis County Recorder's Office, on July 7, 2004 at E2000259, B3576, P123.

I. "Paragraph" shall mean a portion of this Agreement identified by an Arabic numeral or a lower case letter.

J. "Parties" shall mean EPA and the Settling Parties.

K. "Property" shall mean that portion of the Site that is owned by W.S. Hatch Company. The Property is located at 643 South and 800 West in Woods Cross, Davis County, Utah and is more specifically defined as stated on Exhibit A attached hereto.

L. "RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901, *et seq.* (also known as the Resource Conservation and Recovery Act).

M. "Section" shall mean a portion of this Agreement identified by a Roman numeral.

N. "Settling Parties" shall mean W.S. Hatch Company, a Utah Corporation, and Jack B. Kelley, Inc., a Texas corporation, and their respective officers, directors, employees, agents, successors, and assigns.

O. "Site" shall mean the Bountiful/Woods Cross 5th South PCE Plume Superfund site, encompassing approximately 250 acres, located at approximately 500 S to 400 N, and from 500 West to 1100 West in Bountiful, West Bountiful, and Woods Cross, Davis County, Utah, including, without limitation, the fullest extent of the groundwater plume emanating from the Property.

P. "Transfer" shall mean each sale, assignment, transfer or exchange by W.S. Hatch Company (or its successors or heirs) of the Property, or any portion thereof, or of the entity owning the Property, where title to the Property (or any portion or interest thereof) or to the entity owning the Property i) is transferred and Fair Market Value is received in consideration, or ii) is transferred involuntarily by operation of law, including foreclosure and its equivalents following default on the indebtedness secured, in whole or in part, by the Property, including, but not limited to, a deed or other assignment in lieu of foreclosure. A Transfer does not include a transfer pursuant to an inheritance or a bequest.

Q. "United States" shall mean the United States of America, including its departments, agencies, and instrumentalities.

VI. PAYMENT OF RESPONSE COSTS

12. W.S. Hatch Company shall pay to the EPA Hazardous Substance Superfund the principal sum of \$450,000, plus an additional sum for Interest. Each installment, except for the first, on which no Interest shall be due, shall include the principal amount due plus an additional sum for accrued Interest on the declining principal balance calculated from the effective date of this Agreement. Payment shall be made in five annual installments, as follows:

A. The first payment of \$50,000 shall be due and payable no later than thirty (30) days after the effective date of this Agreement.

B. The second payment of \$100,000, plus accrued Interest, shall be due and payable on the first anniversary of the effective date of this Agreement.

C. The third payment of \$100,000 plus accrued Interest, shall be due and payable on the second anniversary of the effective date of this Agreement.

D. The fourth payment of \$100,000 plus accrued Interest, shall be due and payable on the third anniversary of the effective date of this Agreement.

E. The fifth payment of \$100,000 plus accrued Interest, shall be due and payable on the fourth anniversary of the effective date of this Agreement.

F. W.S. Hatch Co. may accelerate these payments, and Interest due on the accelerated payments shall be reduced accordingly. If the Property is Transferred before all payments are made under this Paragraph, the Net Sales Proceeds, up to the amount of principal and accrued Interest owing at the date of Transfer shall be paid to EPA.

G. Jack B. Kelley, Inc shall pay to the EPA Hazardous Substance Superfund the principal sum of \$40,000. Such payment shall be due within thirty (30) days of the effective date of this Agreement.

13. Payments shall be made by Electronic Funds Transfer ("EFT") or Certified Check in accordance with the instructions below and shall be accompanied by a statement identifying the name and address of Settling Parties, the Site name (Bountiful/Woods Cross 5th South PCE Plume NPL Site), the EPA Region, Site/Spill ID and OU# (SSID #08-8G; OU #01), and the EPA docket number for this action (refer to the first page of this Agreement). Settling Parties shall send the check(s) to:

Regular mail: Mellon Bank
Attn: Superfund Accounting
Lockbox 360859
Pittsburgh, PA 15251-6859

Federal Express,
Airborne, etc.: US EPA 360859
Mellon Client Service Center Room 670
500 Ross Street
Pittsburgh, PA 15262-0001

Wire Transfers: Wire transfers should be sent directly to the Federal Reserve Bank in New York City with the following information:

ABA = 021030004
TREAS NYC/CTR
BNF=/AC-68011008

14. At the time of each payment, Settling Party making the payment shall also send notice that such payment has been made to EPA in accordance with Section XIV (Notices and Submissions). Such notice shall reference the EPA Region, the Site name, Site OU, Site/Spill ID and OU# (SSID #08-8G; OU #01), and the EPA docket number for this action.

15. The total amounts to be paid by Settling Parties pursuant to Paragraphs 12) a) and 12) b) shall be deposited by EPA in the Bountiful/Woods Cross 5th South PCE Plume Superfund site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

VII. FAILURE TO COMPLY WITH AGREEMENT

16. If a Settling Party fails to make any payment required by Paragraph 12 by the required due date, all remaining installment payments and all accrued Interest shall become due and payable immediately upon such failure. Interest shall continue to accrue on any unpaid amounts until the entire unpaid principal amount and associated accrued interest has been paid in full.

17. Stipulated Penalties.

A. If any amounts due under Paragraph 12 are not paid by the required date, the relevant Settling Party shall be in violation of this Agreement and shall pay to EPA, as a stipulated penalty, in addition to the Interest required by Paragraph 16, \$2500 per violation per day that such payment is late.

B. Stipulated penalties are due and payable within thirty (30) days of the date of demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall be identified as "stipulated penalties" and shall be made by certified or cashiers check made payable to EPA Hazardous Substance Superfund. The check, or a letter accompanying the check, shall reference the name and address of the Settling Party, the EPA Region, the Site name, Site

OU, Site/Spill ID and OU# (SSID #08-8G; OU #01), and the EPA docket number for this action, and shall be sent to:

Via Regular mail: Mellon Bank
EPA Region VIII
Attn: Superfund Accounting
Post Office Box 360859
Pittsburgh, Pennsylvania 15251-6859

Via Express or
Overnight Mail: Environmental Protection Agency 360859
Mellon Client Services Center, Room 670
500 Ross Street
Pittsburgh, Pennsylvania 15262-0001

C. At the time of each payment, the Settling Party shall send notice that such payment has been made to EPA in accordance with Section XIV (Notices and Submissions). Such notice shall identify the Region and Site-Spill ID # (SSID #08-8G) and the EPA Docket Number for this action.

D. Penalties shall accrue as provided above regardless of whether EPA has notified the Settling Party of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment is due and shall continue to accrue through the date of payment. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Agreement.

18. In addition to the Interest and Stipulated Penalty payments required by this Section and any other remedies or sanctions available to the United States by virtue of a Settling Party's failure to comply with the requirements of this Agreement, if a Settling Party fails or refuses to comply with any term or condition of this Agreement, it shall be subject to enforcement action pursuant to Section 122(h)(3) of CERCLA, 42 U.S.C. § 9622(h)(3). If the

United States brings an action to enforce this Agreement, the relevant Settling Party shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

19. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Agreement. A Settling Party's payment of stipulated penalties shall not excuse the Settling Party from payment as required by Paragraph 12 or from performance of any other requirements of this Agreement.

VIII. COVENANT NOT TO SUE BY EPA

20. Except as specifically provided in Section IX (Reservations of Rights by EPA), EPA covenants not to sue or to take administrative action against Settling Parties pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), with regard to the Site. With respect to present and future liability, this covenant shall take effect for each Settling Party upon receipt by EPA of the last payment due under Section VI, Paragraphs 12) a) and 12) b) (Payment of Response Costs). This covenant not to sue for each Settling Party is conditioned upon the satisfactory performance by each Settling Party of their obligations under this Agreement, including but not limited to, payment of all amounts due under Section VI (Payment of Response Costs) and any amount due under Section VII (Failure to Comply with Agreement). The covenant not to sue to W.S. Hatch Company is also conditioned upon the veracity and completeness of the Financial Information provided to EPA by W.S. Hatch Company. If the Financial Information is subsequently determined by EPA to be false or, in any material respect, inaccurate, W.S. Hatch Company shall forfeit all payments made pursuant to this Agreement and

the covenant not to sue shall be null and void. Such forfeiture shall not constitute liquidated damages and shall not in any way foreclose EPA's right to pursue any other causes of action arising from W.S. Hatch Company's false or materially inaccurate information. This covenant not to sue extends only to Settling Parties and does not extend to any other person.

IX. RESERVATIONS OF RIGHTS BY EPA

21. EPA reserves, and this Agreement is without prejudice to, all rights against Settling Parties with respect to all matters not expressly included within the Covenant Not to Sue by EPA in Paragraph 18. Notwithstanding any other provision of this Agreement, EPA reserves all rights against Settling Parties with respect to:

- A. liability for failure of Settling Parties to meet a requirement of this Agreement;
- B. criminal liability;
- C. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- D. liability, based upon Settling Parties' ownership or operation of the Site, or upon Settling Parties' transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal, of a hazardous substance or a solid waste at or in connection with the Site, after signature of this Agreement by Settling Parties; and
- E. liability arising from the past, present, or future disposal, release or threat of release of a hazardous substance, pollutant, or contaminant outside of the Site.

22. Notwithstanding any other provision of this Agreement, EPA reserves, and this Agreement is without prejudice to, the right to reinstitute or reopen this action, or to commence a

new action seeking relief other than as provided in this Agreement, if the Financial Information provided by W.S. Hatch Company, or the financial certification made by W.S. Hatch Company in Paragraph 30(b), is false or, in an material respect, inaccurate.

23. Nothing in this Agreement is intended to be nor shall it be construed as a release, covenant not to sue, or compromise of any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which EPA may have against any person, firm, corporation or other entity not a signatory to this Agreement.

X. COVENANT NOT TO SUE BY SETTLING PARTIES

24. Settling Parties agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Site or this Agreement, including but not limited to:

A. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

B. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Utah Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

C. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site. Except as provided in Paragraph 26 (Waiver of Claims) and Paragraph 29, these covenants not to sue shall not apply in the event the

United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraph 21(c) - (e), but only to the extent that Settling Parties' claims arise from the same response action or response costs that the United States is seeking pursuant to the applicable reservation.

25. Nothing in this Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

26. Settling Parties agree not to assert any claims or causes of action that they may have for all matters relating to the Site, including for contribution, against any other person. This waiver shall not apply with respect to any defense, claim, or cause of action that the Settling Parties may have against any person if such person asserts a claim or cause of action relating to the Site against such Settling Parties.

XI. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

27. Except as provided in Paragraph 26, nothing in this Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Agreement. EPA reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action that it may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

28. The Parties agree that Settling Parties are entitled, as of the effective date of this Agreement, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for "matters addressed" in this Agreement. The "matters addressed" in this Agreement are all response actions taken or to

be taken and all response costs incurred or to be incurred, at or in connection with the Site, by the United States or any other person. The "matters addressed" in this Agreement do not include those response costs or response actions as to which EPA has reserved its rights under this Agreement (except for claims for failure to comply with this Agreement), in the event that EPA asserts rights against Settling Parties coming within the scope of such reservations.

29. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Parties shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been addressed in this Agreement; provided, however, that nothing in this Paragraph affects the enforceability of the Covenant Not to Sue by EPA set forth in Section VIII.

XII. SITE ACCESS – INSTITUTIONAL CONTROLS

30. Commencing upon the effective date of this Agreement, Settling Parties agree to provide EPA and its representatives and contractors access at all reasonable times to the Property and to any other property owned or controlled by Settling Parties to which access is determined by EPA to be required for the implementation of this Agreement, or for the purpose of conducting any response activity related to the Site, including but not limited to:

- A. Monitoring, investigation, removal, remedial or other activities at the Site;
- B. Verifying any data or information submitted to EPA;
- C. Conducting investigations relating to contamination at or near the Site;
- D. Obtaining samples; and

E. Assessing the need for, planning, or implementing response actions at or near the Site.

31. Within thirty (30) days of the effective date of this Agreement, W.S. Hatch Company shall execute and record in the Clerk and Recorder's Office for Davis County, Utah, a Notice of Easement and Institutional Controls in substantially the form attached hereto as Exhibit B.

32. Within thirty (30) days of recording the easement, W.S. Hatch Company shall provide EPA with a final title insurance policy, or other final evidence of title acceptable to EPA, and a certified copy of the recorded Notice of Easement and Institutional Controls showing the clerk's recording stamps.

33. Notwithstanding any provision of this Agreement, the United States retains all of its access authorities and rights, as well as all of its rights to require land/water use restrictions, including enforcement authorities related thereto, under CERCLA, RCRA and any other applicable statute or regulations.

XIII. ACCESS TO INFORMATION

34. Settling Parties shall provide to EPA, upon request, copies of all records, reports, or information (hereinafter referred to as "records") within their possession or control or that of their contractors or agents relating to activities at the Site, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Site.

35. Confidential Business Information and Privileged Documents.

A. Settling Parties may assert business confidentiality claims covering part or all of the records submitted to EPA under this Agreement to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. 2.203(b). Records determined to be confidential by EPA will be accorded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies records when they are submitted to EPA, or if EPA has notified Settling Parties that the records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2 Subpart B, the public may be given access to such records without further notice to Settling Parties.

B. Each Settling Party may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If a Settling Party asserts such a privilege in lieu of providing records, it shall provide EPA with the following: 1) the title of the record; 2) the date of the record; 3) the name, title, affiliation (*e.g.*, company or firm), and address of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted. If a claim of privilege applies only to a portion of a record, the record shall be provided to EPA in redacted form to mask the privileged portion only. Each Settling Party shall retain all records that it claims to be privileged until EPA has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in Settling Party's favor. However, no records created or generated pursuant to the requirements of this or any other settlement with the EPA pertaining to the Site shall be withheld on the grounds that they are privileged.

36. No claim of confidentiality shall be made with respect to any data, including but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

XIV. RETENTION OF RECORDS

37. Until five (5) years after the effective date of this Agreement, Settling Parties shall preserve and retain all records now in their possession or control, or which come into their possession or control, that relate in any manner to response actions taken at the Site or to the liability of any person for response actions or response costs at or in connection with the Site, regardless of any corporate retention policy to the contrary.

38. After the conclusion of the document retention period in the preceding Paragraph, Settling Parties shall notify EPA at least ninety (90) days prior to the destruction of any such records, and, upon request by EPA, Settling Parties shall deliver any such records to EPA. Each Settling Party may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If a Settling Party asserts such a privilege, it shall provide EPA with the following: 1) the title of the record; 2) the date of the record; 3) the name, title, affiliation (*e.g.*, company or firm), and address of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted. If a claim of privilege applies only to a portion of a record, the record will be provided to EPA in redacted form to mask the privileged portion only. Each Settling Party shall retain all records that it claims to be privileged until EPA has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in Settling Party's favor.

However, no records created or generated pursuant to the requirements of this or any other settlement with the EPA pertaining to the Site shall be withheld on the grounds that they are privileged.

XV. CERTIFICATION

39. W.S. Hatch Company hereby certifies that, to the best of its knowledge and belief, after thorough inquiry, it has:

A. not altered, mutilated, discarded, destroyed or otherwise disposed of any records, reports, or information relating to its potential liability regarding the Site since notification of potential liability by the United States or the state or the filing of a suit against it regarding the Site and that it has fully complied with any and all EPA requests for documents or information regarding the Site and W.S. Hatch Company's financial circumstances pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), or Section 3007 of RCRA, 42 U.S.C. § 6927;

B. submitted to EPA Financial Information that fairly, accurately, and materially sets forth its financial circumstances, and that those circumstances have not materially changed between the time the Financial Information was submitted to EPA and the time W.S. Hatch Company executes this Agreement; and

C. fully disclosed the existence of any insurance policies that may cover claims relating to cleanup of the Site.

XVI. NOTICES AND SUBMISSIONS

40. Whenever, under the terms of this Agreement, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at

the addresses specified below, unless those individuals or their successors give notice of a change to the other Party in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of this Agreement with respect to EPA and Settling Parties.

As to EPA:

Site Attorney
Bountiful/Woods Cross/5th South PCE Plume NPL Site
Mail Code: 8ENF-L
U.S. Environmental Protection Agency,
Region 8
999 18th Street, Suite 300
Denver, Colorado 80202

Remedial Project Manager
Bountiful/Woods Cross/5th South PCE Plume NPL Site
Mail Code: 8EPR-SR
U.S. Environmental Protection Agency,
Region 8
999 18th Street, Suite 300
Denver, Colorado 80202

As to Settling Parties: W.S. Hatch Company

Attn. Ken Kelley
P.O. Box 50539
Amarillo, TX 79121

Jack B. Kelley, Inc.
Attn: Mark Davis
8101 West 34th Avenue
Amarillo, TX 79121

With a copy to:

Kevin R. Murray, Esq.
Mabey Murray LC
136 S. Main, Suite 1000
Salt Lake City, UT 84101

XVII. RELEASE OF NOTICE OF FEDERAL LIEN

41. EPA shall provide to Settling Parties a fully executed, original Release of Notice of Federal Lien in the form attached hereto as Exhibit C upon the earlier of the following times: (i) within thirty (30) days after EPA receives the final payment required by Paragraph 12(a) of this Agreement; or (ii) at such time that Hatchco provides notice to EPA that it has entered into a contract to Transfer the Property, whereupon EPA will provide the Release of Notice of Federal Lien as of the closing of the Transfer, provided that all outstanding payments required under Paragraph 12(a) of this Agreement (including accrued Interest) are paid to EPA from the proceeds of the Transfer.

XVIII. INTEGRATION

42. This Agreement constitutes the final, complete and exclusive agreement and understanding between the Parties with respect to the settlement embodied in this Agreement. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Agreement.

XIX. PUBLIC COMMENT

43. This Agreement shall be subject to a public comment period of not less than thirty (30) days pursuant to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i). In accordance with Section 122(i)(3) of CERCLA, the United States may modify or withdraw its consent to this Agreement if comments received disclose facts or considerations which indicate that this Agreement is inappropriate, improper, or inadequate.

XX. EFFECTIVE DATE

44. The effective date of this Agreement shall be the date upon which EPA issues written notice to Settling Parties that the public comment period pursuant to Paragraph 41 has closed and that comments received, if any, do not require modification of or withdrawal by the United States from this Agreement.

IT IS SO AGREED:

FOR W. S. HATCH COMPANY

By: 

Ken Kelley
Authorized Agent
P.O. Box 50539
Amarillo, TX 79121

11-14-2005
Date

FOR JACK B. KELLEY, INC.

By: 

Mark Davis
President
8101 West 34th Avenue
Amarillo, TX 79121

11-14-05
Date

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 8

By: 

Dale Vodehnal, Director
Superfund Remedial Response Program
Office of Ecosystems Protection and Remediation
U.S. Environmental Protection Agency, Region 8

12/5/05
Date

By: Michael Risner

Michael Risner, Director

Legal Enforcement Program

Office of Enforcement, Compliance, and Environmental Justice

U.S. Environmental Protection Agency, Region 8

12/9/05
Date

By: Sharon L. Kercher

Sharon L. Kercher, Director

Technical Enforcement Program

Office of Enforcement, Compliance, and Environmental Justice

U.S. Environmental Protection Agency, Region 8

9 December 2005
Date

FOR THE U.S. DEPARTMENT OF JUSTICE

By:

W. Benjamin Fisherow
W. Benjamin Fisherow, Deputy Section Chief

Environmental Enforcement Section

Environment and Natural Resources Division

U.S. Department of Justice

Washington, D.C. 20530

1/6/06
Date

EXHIBIT A

Legal Description of the W.S. Hatch Company Site

That certain real property situated in Woods Cross, Davis County, State of Utah,
with a street address of 766 West 700 West, Woods Cross, Utah, and more particularly described
as:

All of Lot 3, WOODS CROSSING COMMERCIAL PARK, as
recorded in the office of the County Recorder for Davis County,
Utah.

After recording, return to:

Kevin R. Murray, Esq.
Mabey Murray LC
136 South Main, Suite 1000
Salt Lake City, UT 84101

With copy to:

Division Director
Division of Environmental Response and Remediation
Utah Department of Environmental Quality
168 North 1950 West
P. O. Box 144840
Salt Lake City, UT 84114-4840

Facility No. _____

Location: _____

ENVIRONMENTAL NOTICE AND INSTITUTIONAL CONTROL

Pursuant to the Utah Environmental Institutional Control Act (Utah Code Sections 19-10-101, et seq.), W.S. Hatch Co. Inc. ("Owner herein), owner of the property located in Woods Cross, in Davis County, State of Utah ("Property"), with a street address of 766 West 700 South, and as more particularly described on Exhibit A attached hereto and made part hereof, hereby makes and imposes upon the Property the following described Institutional Control, subject to the terms and conditions herein stated:

1. Notice is hereby given that the Property is or may be contaminated with hazardous materials as described below and, therefore, institutional control(s) must be imposed to mitigate the risk to the public health, safety and/or the environment:

Volatile organic compounds are present in subsurface soils at concentrations exceeding EPA Region 3 Residential Risk Based Concentrations (adjusted to be equivalent to a 1E-4 cancer risk). However, due to the depth of occurrence, subsurface soils do not pose an unacceptable human health risk via the direct ingestion pathway. Volatile organic vapors originating in subsurface soil contamination (and contaminated groundwater) may intrude into future structures and, therefore may pose a cancer risk greater than 1E-4 for future residents via the inhalation pathway. As a result, land use restrictions requiring mitigation of vapor intrusion into future residential structures are necessary until VOC concentrations no longer pose an unacceptable risk. Although subsurface soil contamination is restricted to a portion of the Site, vapors may migrate beyond the area of subsurface soil and groundwater contamination. Therefore, the extent of potential vapor migration is considered to include the entire Site. The lateral extent of subsurface soil

contamination is illustrated on Exhibit 1. The contaminants of concern (COCs) present in subsurface soils that may contribute to VOC vapors are listed in the table below along with the maximum concentration detected.

COCs in Soil Contributing to Inhalation Risk

Chemical	Maximum Concentration (mg/Kg)¹
Tetrachloroethene	19
Trichloroethene	91
Vinyl Chloride	0.003

¹ – milligram per kilogram

Groundwater contains COC's above Federal Maximum Contamination Levels (MCLs) and risk-based levels (Hazard Quotient = 1) where no MCL exists. Therefore, groundwater use restrictions are necessary under all future land uses until VOC concentrations in groundwater no longer exceed MCLs and risk-based levels.

The maximum concentration of the groundwater COCs are summarized in the table below. The lateral extent of groundwater contamination above MCLs and risk-based levels is illustrated on Exhibit 2.

COCs in Groundwater Above MCLs and Risk-Based Levels

Chemical	Maximum Concentration (mg/L)¹
Cis-1,2-dichloroethene	2.7
Napthalene	0.013
Tetrachloroethene	0.046
Trichloroethene	1.4
Vinyl Chloride	0.47

¹ – milligram per liter

2. Use of the Property is hereby restricted by the following Institutional Controls:

- (a) Active or passive organic vapor mitigation is required for structures constructed for residential use including single or multi family units. Mitigation techniques may include:
- Radon-style sub-slab depressurization systems
 - Sealing of the building and the installation of vapor barriers
- (b) The installation of water wells for any use other than monitoring the groundwater quality is prohibited.

3. This Institutional Control runs with the land and is binding on all successors in interest of the Owner unless or until it is removed as provided in Utah Code Section 19-10-105.

4. The Executive Director of the Utah Department of Environmental Quality, or his/her designated representative, shall have access to the Property at all reasonable times to verify that this Institutional Control is being maintained and that the party or parties in possession of the Property are complying with the Institutional Control.

5. This Institutional Control may be enforced and/or protected as provided in Utah Code Section 19-10-106.

6. Instruments which convey any interest in the Property (fee, leasehold, easement, etc.,) shall contain a notification to the person or entity which acquires the interest that the Property is subject to this Environmental Notice and Institutional Control and identify the specific place at which it is recorded.

7. This Institutional Control may only be terminated in accordance with the provisions of Utah Code Section 19-10-105 and with the prior written approval of the Executive Director of the Utah Department of Environmental Quality.

EXECUTED as of the ____ day of _____, 2005.

W.S. Hatch Company

By: _____
Ken Kelley
Its Authorized Agent

Dianne Nielson, the Executive Director of the Utah Department of Environmental Quality, or her designated representative, hereby approves the foregoing Institutional Control pursuant to Utah Code Section 19-10-103.

Executive Director,
Utah Department of Environmental Quality

STATE OF TEXAS)
) ss.
County of Potter)

On the ____ day of _____, 2005, personally appeared before me Ken Kelley who duly acknowledged to me that he executed the forgoing instrument in his capacity as the Authorized Agent for the W.S. Hatch Company, a Utah corporation.

Notary Public, residing at:

My Commission expires: _____

STATE OF UTAH)
) ss.
County of _____)

Subscribed and sworn to and acknowledged before me this ____ day of _____,
20__, by _____, Executive Director of the Utah Department of Environmental
Quality, or his/her designated representative.

Notary Public, residing at:

My Commission expires: _____

RECORDING REQUESTED BY:)
UNITED STATES ENVIRONMENTAL)
PROTECTION AGENCY REGION 8)
)
AND WHEN RECORDED, MAIL TO:)
U.S. ENVIRONMENTAL PROTECTION)
AGENCY, REGION 8)
999 18TH STREET, SUITE 300)
DENVER, COLORADO 80202-2405)
ATTENTION: RICHARD L. SISK)
MAILCODE 8ENF-L)
_____)

NOTICE OF RELEASE OF FEDERAL LIEN

NOTICE IS HEREBY GIVEN by the United States of America that the Federal Lien, filed with the Davis County, Utah, Recorder's Office on or about July 7, 2004 and recorded as Entry No. 2000259, Book 3576, Page 123 of the Official Records is hereby released. Said Federal Lien, perfected by the filing of the NOTICE OF FEDERAL LIEN on or about July 7, 2004, exists in favor of the United States of America, pursuant to Section 107(l) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9607(l), upon all real property and any rights to such property which belong to W.S. Hatch Company, a Utah corporation and are, have been, or will be subject to, or affected by removal and remedial actions as defined by federal law, in the County of Davis, State of Utah, including the following described lands:

All of Lot 3, WOODS CROSSING COMMERCIAL PARK, as recorded in the office of the County Recorder for Davis County, Utah.

IN WITNESS WHEREOF, the United States has caused this instrument to be executed through the United States Environmental Protection Agency, by Michael T. Risner and Sharon

Kercher, in their official capacities, respectively, as Director, Legal Enforcement Program, and Director, Technical Enforcement Program, of the Office of Enforcement, Compliance and Environmental Justice of the United States Environmental Protection Agency, Region 8.

Dated at Denver, Colorado, this _____ day of January, 2006.

UNITED STATES OF AMERICA
UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY

By: _____
MICHAEL T. RISNER, Director
Legal Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice
U.S. Environmental Protection Agency,
Region 8

Dated at Denver, Colorado, this _____ day of January, 2006.

UNITED STATES OF AMERICA
UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY

By: _____
SHARON KERCHER, Director
Technical Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice
U.S. Environmental Protection Agency,
Region 8

United States of America)
State of Colorado) ss
City and County of Denver)

On this _____ day of January, 2006, there appeared personally before me the undersigned Notary, Michael T. Risner, known to me to be the Director of the Legal Enforcement Program of the Office of Enforcement, Compliance and Environmental Justice of the United States Environmental Protection Agency for Region 8, and he acknowledged that he signed the foregoing NOTICE OF RELEASE OF FEDERAL LIEN in a representative capacity as the free and voluntary act of the United States and its said Agency, for the uses and purposes therein mentioned. GIVEN under my hand and official seal the day and year first stated above.

Sworn and subscribed to before me on this _____ day of January, 2006.

NOTARY PUBLIC
999 18th Street, Denver, Colorado 80202

My commission expires: _____

United States of America)
State of Colorado) ss
City and County of Denver)

On this _____ day of January, 2006, there appeared personally before me the undersigned Notary, Sharon Kercher known to me to be the Director of the Technical Enforcement Program of the Office of Enforcement, Compliance and Environmental Justice of the United States Environmental Protection Agency for Region 8, and he acknowledged that he signed the foregoing NOTICE OF RELEASE OF FEDERAL LIEN in a representative capacity as the free and voluntary act of the United States and its said Agency, for the uses and purposes therein mentioned. GIVEN under my hand and official seal the day and year first stated above.

Sworn and subscribed to before me on this _____ day of January, 2006.

NOTARY PUBLIC
999 18th Street, Denver, Colorado 80202

My commission expires: _____